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**IN THE  
COURT OF APPEALS OF INDIANA**

SHIRLEY ANN MINKS,  
Appellant-Respondent,

VS.

GLENN DOUGLAS MINKS,  
Appellee-Petitioner.

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No. 09A02-0609-CV-731

APPEAL FROM THE CASS SUPERIOR COURT  
The Honorable Thomas C. Perrone, Judge  
Cause No. 09D01-0501-DR-9

**April 4, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Appellant-Respondent Shirley Ann Minks (“Wife”) appeals from the Cass Superior Court’s decree of dissolution, alleging the trial court abused its discretion by ordering an unequal division of her former husband’s, Glenn Douglas Minks (“Husband”), retirement benefits. Concluding that the trial court did not provide written findings adequate to justify an unequal division of the marital retirement benefits, we reverse in part and remand with instructions.

### **Facts and Procedural History**

The facts most favorable to the trial court’s judgment reveal that Husband and Wife were married for approximately thirty-nine years. There were two children born of the marriage, but both were emancipated adults at the time of the filing of the petition for dissolution on January 28, 2004. Prior to the commencement of evidence, Wife filed a motion requesting written findings of fact and conclusions of law, which the trial court granted.

On January 27, 2006, the trial court issued its decree of dissolution, which contained the following pertinent findings of fact and conclusions of law:

9. Except for a short period of time when [Wife] was off work as a result of the birth of the parties’ children, she has worked throughout the marriage as a factory worker at Federal Mogul.
10. Throughout the marriage, [Husband] has worked as a public school teacher, ultimately achieving 30 years of continuous service before retiring early.
11. In addition to teaching school, [Husband] also worked as a carpenter and in construction, principally on home addition and remodeling jobs throughout the marriage.

\* \* \*

13. At the time of the final hearing, [Husband's] reported annual income was \$7,613.42 (L.C.S. Early Retirement Pay) and \$21,666.60 (Indiana Teacher Retirement). . . . The Court was not furnished with any figure as to [Husband's] income for his carpentry and/or construction work.
14. [Wife's] reported income from her full-time employment at Federal Mogul was \$20,831.10. [Wife] has no other source of income. . . .

\* \* \*

22. The Court finds [Husband] has a vested right to receive benefits from the Indiana Teacher Retirement Fund for the rest of his life. The Court further finds this benefit is presently payable at the rate of \$1,823.61.
23. The Court finds that [Husband] is also entitled to receive an annual payment from the Logansport Community School of \$7,613.42. The Court finds this annual payment will continue through [Husband's] 62nd birthday in 2008.
24. Other than daily living expenses and the parties' respective attorney's fees, there are no debts of the parties to be determined and divided.

\* \* \*

The Court now makes the following conclusions based upon the findings of fact set forth above and after a reasonable consideration of the same:

\* \* \*

- B. The Court concludes that [Husband] should be awarded the following assets as his sole and separate property:

1991 Ford F150	\$ 3,000.00
Beacon Credit Union Savings	\$ 14,928.33
Community State Savings	\$ 8,061.59
AIG Valic Annuity	\$ 1,598.71
Western Res. Life IRA	\$ 78,514.00
Western Res. Annuity	\$ 78,675.00
AUL Group Annuity	\$ 55,454.87
Community State Bank IRA	\$ 6,008.68
MONY Life Ins. Cash value	\$ 12,092.04

Northwestern Mut. Life Ins. Cash	
Value	<u>\$ 12,238.48</u>
	\$270,571.70

- C. The Court concludes that [Wife] should be awarded the following assets as her sole and separate property:

Marital Home	\$ 118,000.00
1994 Oldsmobile	\$ 1,500.00
Diversified Credit Union	\$ 2,899.79
Pension Benefits	\$ 2,068.08
401(K)	\$ 23,410.67
MONY life insurance	\$ 2,873.35
Cash	\$ 26,000.00
Savings	<u>\$ 10,000.00</u>
	\$ 186,751.89

D. To equalize the property distribution, [Husband] will transfer to [Wife] \$41,910 pursuant to a QDRO from the Western Reserve Life IRA. [Wife] is entitled to any interest in that amount from the date of this order.

E. The Court concludes that each party presently will receive certain pension or retirement benefits for the rest of their lives and that those benefits are divisible assets in the marriage. Here, the Court is referring specifically to [Husband's] Indiana State Teacher Retirement Fund benefits; his early retirement payments from Logansport Community Schools; and [Wife's] Federal Mogul pension. The Court notes that neither has provided the Court with a present cash value for these items.

F. The Court concludes that it is appropriate to divide the retirement assets of the marriage. *After [Wife] has retired* the total pension retirement income will be equally divided. Pension retirement income includes [Husband's] Indiana State Teacher Retirement Fund benefits, [Husband's] early retirement payments from Logansport Community Schools, if any, and [Wife's] Federal Mogul pension. Equal division will equal a monthly payment from [Husband] to [Wife] such that each of them receives 50% of the total payment from the three sources listed above. . . . *The payments ordered above do not start until [Wife] has retired from Federal Mogul* and shall end with the death of either party.

Appellant's App. pp. 32-37 (emphasis added). On February 6, 2006, Wife filed a motion to correct error and the trial court held a hearing on May 12, 2006. Following the hearing and additional submissions to the Court, the trial court issued its order correcting error on July 28, 2006. This appeal ensued.

### **Discussion and Decision**

Wife asserts that the trial court abused its discretion in the manner in which it divided the marital estate, challenging, in particular, the trial court's award of Husband's pension to him in its entirety until she retires. Specifically, Wife claims that "[t]he trial court has not provided written findings to adequately justify such an unequal division, has not explained why [Wife] should be forced to retire early and has not identified any legal standard under which [Husband] should receive all of his teacher retirement benefits." Br. of Appellant at 9. We agree.

Initially, we note our standard of review. The division of marital assets is within the trial court's discretion, and we will reverse only for an abuse of discretion. McCord v. McCord, 852 N.E.2d 35, 43 (Ind. Ct. App. 2006). A party challenging the trial court's division of marital property must overcome a strong presumption that the trial court "considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal." Id. at 43-44. We may not reweigh the evidence or assess the credibility of the witnesses, and we will consider only the evidence most favorable to the trial court's disposition of the marital property. Id. at 44. Although the facts and reasonable inferences might allow for a different

conclusion, we will not substitute our judgment for that of the trial court. Galloway v. Galloway, 855 N.E.2d 302, 304 (Ind. Ct. App. 2006).

We observe that the trial court entered written findings of fact and conclusions pursuant to Wife's request under the provisions of Indiana Trial Rule 52(A). When, upon request of any party to the action, findings and conclusions thereon are entered by the trial court, we apply a two-tiered standard of review. Maloblocki v. Maloblocki, 646 N.E.2d 358, 361 (Ind. Ct. App. 1995). First, we determine whether the record supports the findings and, second, whether the findings support the judgment. Granzow v. Granzow, 855 N.E.2d 680, 683 (Ind. Ct. App. 2006). In this instance, we are bound by the findings made by the trial court, and we will reverse only where the findings are clearly erroneous, that is, where the findings are unsupported by the evidence. Maloblocki, 646 N.E.2d at 361.

Our review of the record reveals that the evidence supports the trial court's findings and conclusions thereon that the marital assets should be equally divided between Husband and Wife. We therefore affirm the trial court's judgment, except for its division of the retirement assets. See Galloway, 855 N.E.2d at 305 (stating Indiana law presumes that an equal division of the marital property between the parties is just and reasonable). Additionally, we note that neither party disputes the trial court's correct conclusion of law that Husband's and Wife's retirement accounts are marital property subject to distribution. See Coffey v. Coffey, 649 N.E.2d 1074, 1076-77 (Ind. Ct. App. 1995) (holding that Indiana's statutory definition of property contemplates that all assets, including the various pension interests are to be considered marital property subject to

division); see also Ind. Code § 31-9-2-98 (1998). However, the trial court made no specific findings to support its conclusion awarding Husband all of his pension payments until Wife retired.

The purpose of specific findings is to provide the parties and reviewing courts with the theory on which the judge decided the case in order that the right of review for error may be effectively preserved. In re Marriage of Miles, 173 Ind. App. 5, 9, 362 N.E.2d 171, 173 (1977). Thus, whether the findings are adequate depends upon whether they are sufficient to disclose a valid basis for the legal result reached in the judgment. Id. Moreover, where, as here, the outcome is not mandated by an established rule of law but, instead, the decision rests within the discretion of the trial court, we must reverse if the decision is not consistent with the findings and conclusions or if the reasons given are insufficient as a matter of law to justify the manner in which the court exercised its discretion. Id.

A trial court is required to divide all marital property in a just and reasonable manner. Coffey, 649 N.E.2d at 1077. Indiana Code section 31-15-7-5 creates a rebuttable presumption that an *equal* division of the marital property is just and reasonable. See id. (emphasis added). This presumption may be rebutted by a party who presents relevant evidence that an *unequal* division is just and reasonable. Id. (emphasis added); see also Galloway, 855 N.E.2d at 305. However, if the trial court deviates from the equal division presumption, it must state its reasons for doing so. Galloway, 855 N.E.2d at 305.

Here, the trial court's conclusion that the retirement assets of the marriage should be divided between the parties "such that each of them receives 50% of the total payment from the three [pension] sources listed above" was supported by the evidence and its findings of fact. Appellant's App. p. 37. However, notwithstanding this conclusion, the trial court further ordered that "[t]he payments ordered above do not start until [Wife] has retired [,]" thereby penalizing Wife by forcing her to either retire early or forfeit a portion of the marital estate she would otherwise have been entitled to receive. Id. In so doing, however, the trial court provided no explanation, either in its findings or conclusions thereon, as to why this unequal division of Husband's pension retirement income was just and reasonable.

Based on the foregoing, we conclude that the trial court's findings of fact are insufficient to justify the manner in which it exercised its discretion in awarding Husband the full amount of his pension retirement income until Wife retires. Accordingly, we are constrained to reverse and remand this issue to the trial court with directions to divide Husband's pension equity between Husband and Wife and for proceedings consistent with this opinion. As to all other property division contained in the trial court's dissolution decree, we affirm.

Affirmed in part, reversed in part, and remanded with instructions.

NAJAM, J., and MAY, J., concur.